

# Exhibit B

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

RASEDUR RAIHAN,

Defendant.

\* \* \* \* \*

Case No. 20-CR-68 (BMC)

Brooklyn, New York

March 12, 2020

TRANSCRIPT OF CRIMINAL CAUSE FOR TELEPHONE STATUS CONFERENCE  
BEFORE THE HONORABLE JAMES ORENSTEIN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:

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Brooklyn, NY 11201

For the Defendant:

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1 (Proceedings commenced at 1:59 p.m.)

2 THE CLERK: Criminal cause for status conference on  
3 docket no. 20-CR-068, United States of America versus Rasedur  
4 Raihan.

5 Counsel, please state your name for the record.

6 MR. BUSHWACK: Michael Bushwack for the United  
7 States. Good afternoon, everyone.

8 THE COURT: Good afternoon.

9 MS. OLIVERA: Leticia Olivera on behalf of Mr.  
10 Raihan. Good afternoon.

11 THE COURT: Good afternoon.

12 MS. OLIVERA: Mr. Raihan, just to confirm, you're  
13 on the line?

14 THE COURT: Good afternoon, Mr. Raihan. It's Judge  
15 Orenstein.

16 THE DEFENDANT: Good afternoon.

17 THE COURT: All right. Anyone else on the line?

18 (No response.)

19 All right, folks. And I just before getting on the  
20 phone received a report alleging the violation of the order  
21 of conditions of release. It's dated today. Have you all  
22 had a chance to see it?

23 MR. BUSHWACK: So as we're speaking, Your Honor,  
24 it just came through on my email. However, I did earlier  
25 today speak with the Pretrial Services officer, Robert Long,

1       who also indicated to me that he spoke with Ms. Oliveri  
2       earlier today.

3               THE COURT: Ms. Oliveri, you're aware of the  
4       substance of the report?

5               MR. BUSHWACK: I'm sorry, Your Honor. Could you  
6       say that again?

7               THE COURT: I just asked if you're aware of the  
8       substance of the report.

9               MS. OLIVERA: I am.

10              THE COURT: Well, we'll circle back to the bail  
11       issue. First of all, I saw, Mr. Bushwack, the government  
12       just in the last day or so provided some discovery. Is that  
13       correct?

14              MR. BUSHWACK: That's correct.

15              THE COURT: Okay. Is there anything either of you  
16       wanted to raise in terms of housekeeping, either plans for  
17       further discovery or motion practice?

18              MR. BUSHWACK: Not in terms of the government,  
19       Your Honor. We have produced substantial discovery and hand  
20       delivered it to counsel earlier today. My apologies for  
21       incorrectly filing it on the electronic docket.

22              But in terms of the discovery, the vast majority,  
23       if not all, has been produced to date.

24              THE COURT: Okay. And Mr. Bushwack, I just didn't  
25       want an open motion on the docket. I don't otherwise care

1       how you style it.

2               Ms. Olivera, are you anticipating any motions?

3               MS. OLIVERA: Your Honor, as is our standard  
4       practice, we'll review the government's initial discovery  
5       production and then file a Rule 16 discovery letter. And  
6       then, you know, we'll confer with the government to see if we  
7       should anticipate any additional discovery in response to  
8       that request.

9               THE COURT: Okay. All right. Are you engaged in  
10      plea negotiations?

11              MR. BUSHWACK: We have had some preliminary  
12      conversations. And as it relates to discovery, I mean,  
13      obviously, I'm open to discuss anything with counsel. If  
14      there's anything outstanding specific that you're looking  
15      for, I'd be more than happy to address any of those issues,  
16      if it's not already contained in that discovery.

17              But in terms of plea negotiations, we did have  
18      preliminary plea discussions and negotiations. I imagine  
19      those will probably continue after review of the discovery,  
20      but I certainly don't want to speak for counsel.

21              MS. OLIVERA: That's correct, Your Honor.

22              We have discussed -- we have had preliminary  
23      discussions about how to resolve this case. But until we get  
24      the discovery we can't really start considering the guideline  
25      range or anything that we would have to -- or the sorts of

1 things we would have to advise Mr. Raihan on before we can  
2 meaningfully move forward with predisposition or motion  
3 practice in preparation for trial.

4 So I anticipate that after reviewing the discovery  
5 we'll be in a better position to start moving forward.

6 THE COURT: Okay. Well, I will set this down for  
7 another conference. I'd like to make it 30 days but my  
8 schedule precludes that.

9 Let's plan on another conference at -- on Tuesday,  
10 April 21st at 11:00 a.m.

11 MR. BUSHWACK: That is acceptable to the  
12 government. Thank you, Judge.

13 THE COURT: Does that work for you?

14 MS. OLIVERA: That works for us also.

15 THE COURT: Okay. And at that conference I'll  
16 expect either to set a motion or send the case back to Judge  
17 Cogan for trial proceedings.

18 Now what are the parties' positions with respect to  
19 the alleged violation of conditions of release?

20 MR. BUSHWACK: If Your Honor wouldn't mind, I'd  
21 like to, I guess, place on the record the substance of my  
22 conversation with Pretrial Services, Mr. Long, earlier today.

23 And there is a decent amount of background as it  
24 relates to that.

25 So on February 12th of this year we had a bail

1 revocation hearing before Judge Bloom and that was predicated  
2 upon the defendants having failed 14 of 15 drug tests and  
3 also having 11 missed treatment sessions. That was all  
4 placed on the record and discussed with the court.

5 As a result of that conference, the judge had  
6 ordered the defendant to home detention with an ankle  
7 bracelet and electronic monitoring and also had ordered that  
8 as soon as a bed became available, the defendant was to then  
9 go to an inpatient facility.

10 My understanding from Mr. Long and Pretrial  
11 Services is that as of today no bed is available, but also  
12 Judge Bloom's directives were predicated upon the fact that  
13 the defendant wouldn't have any subsequent failures or  
14 violations in terms of his treatment and the conditions  
15 placed upon him.

16 In speaking with Mr. Long earlier today, he  
17 indicated that the individual who was the drug treatment  
18 specialist, a Ms. Laura Fahmy, F-A-H-M-Y, unfortunately, is  
19 not available today or is not in the office today. He's not  
20 sure if she'll be in the office tomorrow. But as of today  
21 there are no beds available for Mr. Raihan.

22 OFFICER SANAN-JULES: I can answer that. My name  
23 is Ignace Sanan-Jules of Pretrial Services. I'm actually  
24 Officer Long's supervisor.

25 THE COURT: Oh, great. I didn't know you were on

1 the line.

2 OFFICER SANAN-JULES: Yeah, I just logged in. I was  
3 trying to get in. I had difficulty.

4 So the defendant continues to test positive. In  
5 fact, he was tested on February 27th and that test was  
6 positive for amphetamines. So he's still using.

7 Our concern is now he's on home detention. There  
8 is no treatment facility available. There's been a slow down  
9 because trying to also deal with the COVIN-19 virus. So  
10 we're not sure when placement's going to be available.

11 When we had our appearance before Judge Bloom we  
12 did recommend that the defendant be detained pending  
13 placement. This may be delayed now because of what's going  
14 on and he still continues to use.

15 THE COURT: I get the --

16 MS. OLIVERA: Your Honor --

17 THE COURT: Yes, go ahead, Ms. Olivera.

18 MS. OLIVERA: So the result that we're discussing  
19 is two weeks old. Mr. Raihan is attending outpatient  
20 treatment and my understanding is that the outpatient  
21 treatment provider does test him twice a week.

22 I submitted to the Pretrial Services office test  
23 results that were collected from the specimen on February  
24 27th as the treatment provider that returned results that  
25 were negative for all substances.



1           Pretrial Services has not given any indication  
2           about whether they are aware of any positive results since  
3           then.

4           I do -- I can only assume that Mr. Raihan has  
5           continued to attend outpatient treatment at the treatment  
6           provider they set up with him and has continued to be tested  
7           for the past two weeks, but we have not heard anything from  
8           Pretrial about those tests that should have happened since  
9           the 27th.

10           THE COURT: All right. Is the government -- go  
11           ahead.

12           PRETRIAL SERVICES OFFICER SANAN-JULES: I could  
13           definitely follow up and find out the results from the  
14           treatment program. I do not have that available right now.

15           THE COURT: Okay. Is the government seeking any  
16           relief at this point?

17           MR. BUSHWACK: The government was in agreement  
18           with Pretrial Services back in February, February 12  
19           specifically, that the defendant should be detained pending  
20           any inpatient. I don't think -- you know, his subsequent  
21           failures to comply with the terms and conditions just  
22           reinforces that position.

23           And with respect to the statement that the  
24           defendant was negative on the 27th at the treatment facility  
25           that was explained to me by Mr. Long, which makes perfect

1 sense, that the treatment facility's cut offs are much higher  
2 than that of Pretrial Services. So it's just that -- it's  
3 not that he was -- and this is based on the information  
4 provided by Pretrial.

5 It's not that Mr. Raihan was, in fact, clean on the  
6 27th. It's just that the cut off with respect to testing at  
7 the treatment facility is much higher than that of Pretrial  
8 Services.

9 THE COURT: So you know --

10 MR. BUSHWACK: So the government --

11 THE COURT: Excuse me. Mr. Bushwack, you're saying  
12 you know how much -- you're saying that had it been a  
13 different test on that date, he would have tested positive?

14 MR. BUSHWACK: Based on the information provided by  
15 Pretrial Services, if the cut offs would have been lower at  
16 the facility, correct. And Mr. --

17 THE COURT: Wait, wait, wait. Wait. Are we  
18 talking about two different dates?

19 MR. BUSHWACK: No, we're talking about the same  
20 date, Your Honor.

21 THE COURT: I see.

22 OFFICER SANAN-JULES: The same thing. That  
23 information is accurate.

24 THE COURT: Okay. So listen, Mr. Bushwack, let me  
25 ask you, I think now the third time. Maybe you'll answer it

1 this time. Are you seeking any relief today?

2 MR. BUSHWACK: That's a difficult question, Your  
3 Honor, just because --

4 THE COURT: Yes, and it's the one I've had to ask  
5 you now four times. How man -- let's do it this way.

6 Just let me know the number of times I need to ask  
7 it before you'll give me an answer. Whatever that number is,  
8 please pretend I've asked it that many times.

9 MR. BUSHWACK: Yes.

10 THE COURT: Okay. What relief are you seeking?

11 MR. BUSHWACK: That the defendant's detained.

12 THE COURT: Okay. If this were a month ago, I  
13 think that would be a relatively easy call.

14 Under the Bail Reform Act I have to consider the  
15 risk to the community. Our community includes the people  
16 incarcerated at the MDC, those who work there and those who  
17 live and interact with those who work there. And let's not  
18 kid ourselves. The more people we crowd into that facility,  
19 the more we're increasing the risk to the community.

20 I'm really hesitant to respond to drug usage with  
21 incarceration given that risk. Is there any reason to think  
22 that continuing Mr. Raihan on the conditions that I recognize  
23 that are not working as intended will endanger the community?

24 OFFICER SANAN-JULES: Ignace from Pretrial. I  
25 don't think it's an added danger to the community. My

1 concern is for his health and well being.

2 THE COURT: Yes.

3 OFFICER SANAN-JULES: He doesn't live with his  
4 parents. He lives with a bunch of roommates. He's using and  
5 I'm just afraid he may overdose one day, because it's not  
6 just marijuana. He's smoking heavy stuff.

7 THE COURT: I hear you and like I say, this would  
8 be an easy call a month ago.

9 Mr. Raihan, you're on the phone. You can hear me,  
10 right?

11 THE DEFENDANT: Yes, sir.

12 MS. OLIVERA: Your Honor, I'd also like to request  
13 the opportunity to be heard at some point.

14 THE COURT: Please. Let me hear you.

15 MS. OLIVERA: Your Honor, we're talking about a  
16 drug result from two weeks ago that we are disputing based on  
17 another -- a conflicting result from the treatment provider.  
18 We understand --

19 THE COURT: Again, Ms. Olivera -- but you know  
20 what? That -- as far as I'm concerned, for today's purpose  
21 that ship has sailed.

22 If you have some other argument to make, I'm happy  
23 to hear.

24 MS. OLIVERA: Okay. But what I'd like --

25 THE COURT: But the record makes sufficiently clear

1 to me that your client is continuing to use in violation of  
2 the conditions of his release.

3 The really tough question for me is what to do  
4 under the circumstances in which we find ourselves where  
5 incarceration is likely to increase the risk to the  
6 community.

7 Do you want to say anything on that?

8 MS. OLIVERA: If we are gauging the risk to the  
9 community or my client, I think it's important to know what  
10 has happened in the two weeks that have passed since the  
11 27th.

12 Pretrial is telling us that they don't know the  
13 test results that he's had over the past two weeks and there  
14 is every indication that he's continued to attend treatment.

15 So if the case is that he's been clean for the past  
16 two weeks and attending treatment, then I believe that shows  
17 that any danger to the community or Mr. Raihan himself is  
18 greatly reduced.

19 I think it's very different to say that someone has  
20 been continuously using than that someone received a positive  
21 result two weeks ago that could have been residual use,  
22 wasn't confirmed.

23 There may be some sort of issue with it that we  
24 don't believe -- it doesn't appear has been explored, but I  
25 think that if we're talking about a remand, we should at

1       least know what's happened in the two weeks from that  
2       positive test result.

3               THE COURT: All right. Thank you.

4               I'm going to continue the defendant on release but  
5       Mr. Raihan, if you continue to use, as I am satisfied you  
6       have been doing, I'll have to revisit this issue.

7               I really don't want to put you in the MDC, Not if  
8       you're not doing something to affirmatively endanger people  
9       and even at the risk, quite frankly, that your continued use  
10      of drugs will endanger yourself.

11              If you continue to use, you're only hurting your  
12      own chances for remaining at liberty and your own health. And  
13      I want to be informed promptly if there's any further  
14      positive test.

15              Do you understand me, Mr. Raihan?

16              THE DEFENDANT: Yes.

17              THE COURT: All right. Is there anything else for  
18      today?

19              MR. BUSHWACK: Nothing from the government. Thank  
20      you.

21              MS. OLIVERA: Nothing from the defense.

22              THE COURT: Thank you, all. Have a good day.

23              MR. BUSHWACK: Thank you.

24              MS. OLIVERA: Thank you, Judge.

25              (Proceedings concluded at 2:16 p.m.)

1 I, CHRISTINE FIORE, court-approved transcriber and certified  
2 electronic reporter and transcriber, certify that the  
3 foregoing is a correct transcript from the official  
4 electronic sound recording of the proceedings in the above-  
5 entitled matter.

6  
7 

8 \_\_\_\_\_ March 12, 2020

9 Christine Fiore, CERT

10 Transcriber  
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